

Message Text

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ACTION EB-07

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E.O. 11652: N/A
TAGS: EAIR, US, IT
SUBJECT: CIVAIR: DISCRIMINATION AT ROME AIRPORTS

REF: (A) STATE 289517 (B) ROME 19864

SUMMARY: CIVILAVIA HAS SENT ITS VIEWS ON DISCRIMINATION AT ROME AIRPORT TO MFA, SUGGESTING THAT RESPONSE TO EMBASSY'S NOTE SHOULD BE FORTHCOMING SOON. CIVILAVIA OFFICIALS INSIST THAT ALITALIA SHOULD BE PAYING USER FEES TO SAR, THAT SLIDING SCALE OF FUTURE PAYMENTS DOES NOT APPLY TO ROME AIRPORTS BECAUSE THEY ARE NOT MANAGED BY THE STATE, AND THAT LAZIO TRIBUNAL DECISION WILL FORCE ALITALIA TO PAY. THEY ALSO STATED CIVILAVIA HAS ORDERED ALITALIA TO TURN OVER ITS GROUND HANDLING FACILITIES AND PERSONNEL TO SAR AND THAT THIS MATTER HAS ALSO BEEN REFERRED TO THE TRIBUNAL. EMBASSY ALSO DISCUSSED DISCRIMINATION WITH AMBASSADOR MONDELLO AND FARACE AT MFA. END SUMMARY.

1. ECMIN AND EMBOFF CALLED ON DR. COLLINI, DIRECTOR GENERAL OF CIVIL AVIATION (DGCA), AND DR. LIOI OF CIVILAVIA DECEMBER 15 AS FOLLOW-UP TO LAST MONTH'S CONVERSATION SAME SUBJECT (ROME 18801) AND TO NOTE INCREASING ADVOCACY FOR APPLICATION OF COMPENSATORY CHARGES UNDER THE TWO DEPARTMENT OF TRANSPORTATION FINDINGS OF DISCRIMINATION WITH RESPECT
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TO USER NEES AND GROUND HANDLING.

2. DGCA REPLIED ON CONFIDENTIAL BASIS THAT HE HAD SENT LETTER TO MFA GIVING CIVILAVIA'S POSITION ON MATTER; THUS, HE ASSUMED, EMBASSY WOULD RECEIVE REPLY TO ITS NOTE OF MAY 21, 1976 (ON DISCRIMINATION) FROM MFA SHORTLY. DGCA

AND LIOI SAID CIVILAVIA POSITION SET OUT IN LETTER IS THAT NO DISCRIMINATION EXISTS WITH REGARD TO USER FEES BECAUSE GOI HAS TAKEN NECESSARY STEPS TO REQUIRE PAYMENT, HENCE IT HAS CARRIED OUT ITS OBLIGATIONS TO U.S. ALITALIA HAS CHOSEN JUDICIAL ROUTE, AND IT WOULD BE INAPPROPRIATE FOR U.S. TO TAKE ACTION WHILE ISSUE UNDER JUDICIAL REVIEW. CIVILAVIA OFFICIALS WERE CONFIDENT LAZIO ADMINISTRATIVE TRIBUNAL WILL FIND IN FAVOR OF SOCIETA AEROPORTI DI ROMA (SAR) AND REQUIRE ALITALIA TO PAY USER FEES, INCLUDING RETROACTIVELY; HOWEVER, THEY WERE UNABLE TO PREDICT WHEN TRIBUNAL MIGHT REACH FINAL DECISION.

3. DGCA AND LIOI (LATTER APPEARED TO BE MUCH BETTER VERSED IN THIS PROBLEM) CLAIMED THAT GRADUAL INCREASE IN PROPORTION OF USER FEES TO BE PAID BY NATIONAL AIRLINES SPECIFIED IN ART. 4 OF LAW 324 OF MAY 5, 1976 ("SANGALLI LAW") DOES NOT APPLY TO ROME AIRPORTS BECAUSE THEY ARE NOT OPERATED BY THE STATE (I.E. DIRECTLY UNDER THE CONTROL OF CIVILAVIA) BUT BY A "PRIVATE" CORPORATION, SAR (100 PERCENT OWNED BY ITALSTAT, WHICH IS WHOLLY OWNED BY IRI, A STATE OWNED HOLDING COMPANY). WHEN QUESTIONED ON THIS POINT, LIOI CITED REFERENCE IN FIRST SUBPARAGRAPH OF ART. 4 OF LAW 324 TO LAW 88 OF SEPT. 4, 1946, AS BASIS FOR NON-APPLICATION OF FUTURE PAYMENT SCALE OF ART. 4 IN CASE OF ROME AIRPORTS-- NOT ART. 6 WHICH HAS BEEN CONSISTENTLY CITED BY FIACCADORI (MFA) AND REPORTED IN EARLIER CABLES.

4. UNDER PROVISIONS OF LAW 88, STATE-CONTROLLED AIRLINES MAY BE GRANTED IN THEIR OPERATING PERMITS THE "ENJOYMENT" (GODIMENTO) OF AIRPORTS CONTROLLED BY AERONAUTIC ADMINIS- LIMITED OFFICIAL USE

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TRATION. ("ENJOYMENT" HAS BEEN TAKEN TO MEAN FREE USE EVER SINCE LAW 88 WAS ISSUED--AT WHICH TIME ALL AIRPORTS WERE CONTROLLED BY THE AERONAUTIC ADMINISTRATION, WHICH WAS UNDER THE MINISTRY OF DEFENSE.) LIOI THEN REFERRED TO THE TEXT OF THE ALITALIA OPERATING PERMIT (CONVENZIONE NO. 181 ISSUED UNDER DECREE LAW NO. 2398 OF JUNE 4, 1963), WHICH STATES IN ART. 29, FIRST SUBPARAGRAPH, THAT ALITALIA HAS FREE USE (USO GRATUITO) OF STATE AIRPORTS OPERATED BY THE STATE.

5. THEREFORE, LIOI EMPHASIZED CIVILAVIA IS IN AGREEMENT WITH SAR THAT ALITALIA SHOULD BE PAYING USER FEES NOW AND OWES USER FEES RETROACTIVELY (HE DID NOT SPECIFY TO WHICH OF MANY DATES CITED IN PRECEDING CABLES ON THIS ISSUE). HE GAVE ASSURANCE THAT CASE BEFORE LAZIO ADMINISTRATIVE TRIBUNAL IS ACTIVE. (EMBASSY HAS FINALLY ACQUIRED ENOUGH INFORMATION ON CASE TO CHECK COURT DOCUMENTS AND FINDS THAT NEXT HEARING IS SCHEDULED FOR JAN. 31, 1977.)

6. EMBOFF, RECALLING THAT CASE HAS BEEN BEFORE LAZIO TRIBUNAL SINCE OCT. 15, 1974, AND TAKING NOTE OF GENERAL INABILITY TO PREDICT WHEN CASE MIGHT BE RESOLVED, SAID POSSIBLE SOLUTION DISCUSSED IN MAY CONSULTATIONS (COLLECTION OF COMPENSATORY CHARGES FROM ALITALIA AND HOLD THEM IN TRUST ACCOUNT) MIGHT BE ONLY WAY TO DEAL WITH SITUATION UNTIL LAZIO TRIBUNAL ARRIVES AT FINAL DECISION. WHILE COLLINI SHOWED SOME INTEREST (PERHAPS BECAUSE HE HAD NOT YET BEEN FULLY BRIEFED ON ISSUE), LIOI DISAGREED STRONGLY. HE SAID U.S. SHOULD WAIT FOR LAZIO TRIBUNAL DECISION AND THAT U.S. HAD NO RIGHT UNDER BILATERAL TO MAKE SUCH COMPENSATORY CHARGES. EMBOFF REPLIED IT WAS NOT MERELY A QUESTION OF THE BILATERAL AND ITALIAN LAW, BUT OF U.S. LAW AS WELL.

7. IN CONCLUDING CONVERSATION THIS SUBJECT, ECMIN MADE TZO POINTS:
(A) IF MFA ACCEPTS CIVILAVIA'S ARGUMENT RE LEGAL SITUATION ON ALITALIA'S NONPAYMENT OF USER CHARGES (PARA 3 AND 4 ABOVE), LIMITED OFFICIAL USE

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IT WOULD BE VERY HELPFUL FOR GOI TO PROVIDE US IN ADVANCE OF JANUARY 10 CONSULTATIONS WITH CLEARLY DETAILED EXPOSITION OF GOI POSITION INCLUDING COMPLETE TEXTS OF PERTINENT LEGISLATION AND REGULATIONS. THAT WOULD ENABLE U.S. TO TRANSLATE AND DIGEST THEM BEFORE RATHER THAN DURING CONSULTATIONS. COLLINI PROMISED HE WOULD DO SO.

(B) GOI SHOULD NOT ASSUME THAT U.S. WILL BE CONTENT TO SIT BACK AND WAIT INDEFINITELY FOR COURT DECISION ON ALITALIA'S CASE, PARTICULARLY SINCE THERE IS NO INDICATION WHEN THAT WILL COME. INDEED, HE NOTED, IT IS NOT INCONCEIVABLE THAT ALITALIA IS SEEKING TO DELAY DECISION WHILE GOI IS TAKING NO STEPS TO EXPEDITE IT. COLLINI THEREUPON ASSERTED HE WOULD CONTACT PRESIDENT OF LAZIO ADMINISTRATIVE TRIBUNAL TO ADVISE OF INTERNATIONAL PROBLEM CAUSED BY DELAY IN DECISION.

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8. PRIOR TO THIS MEETING WITH COLLINI AND LIOI (DEC. 10), ECMIN, IN COURSE OF DISCUSSION OF OTHER ISSUES WITH MFA DIRECTOR GENERAL FOR ECONOMIC AFFAIRS AMBASSADOR MONELLO, EXPRESSED OUR CONCERN OVER DISCRIMINATION ISSUE AND NOTED POSSIBILITY THAT U.S. WOULD HAVE TO IMPOSE COMPENSATORY CHARGES ON ALITALIA. MONDELLO EXPRESSED CONCERN AND ASKED WHETHER SUCH ACTION MIGHT PRECEDE JAN. 10 CONSULTATIONS. WHEN ECMIN REPLIED IN NEGATIVE, MONDELLO URGED THAT HE DISCUSS MATTER WITH AMBASSADOR FARACE, WHO WILL HEAD GOI DELEGATION AT CONSULTATIONS.

9. WHEN ECMIN RAISED DISCRIMINATION ISSUE WITH FARACE DEC. 16 LATTER SAID LITTLE ON SUBSTANCE OF THE MATTER, BUT GAVE INDICATIONS THAT HE ACCEPTED CIVILAVIA'S VIEW AS EXPRESSED IN PRECEDING PARAS. FARACE ALSO SAID HE WOULD TALK TO ALITALIA MANAGING DIRECTOR NORDIO ON THE SUBJECT. FARACE DID NOT REACT WHEN ECMIN SUGGESTED THAT PERHAPS ONLY SOLUTION WOULD BE TO HOLD IN TRUST COMPENSATORY CHARGES UNTIL TRIBUNAL HAD MADE ITS FINDING. HOWEVER, HE TOOK NOTE OF ECMIN'S REPETITION OF TWO POINTS MADE TO COLLINI (PARA 7) RE NECESSITY FOR DOCUMENTATION OF GOI'S LEGAL ARGUMENT AND UNCERTAIN TIMING OF COURT DECISION.

10. ALITALIA SOURCE HAS INDICATED THAT ALITALIA BASES ITS CASE OF LAST TWO PARAGRAPHS OF ART. 29 OF ALITALIA'S
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OPERATING PERMIT, WHICH STATE THAT: "THE MINISTRY (OF TRANSPORT) ASSUMES THE OBLIGATION, IN CASE IT AWARDS MANAGEMENT OF THE SAID (STATE) AIRPORTS TO THIRD PARTIES, TO ESTABLISH, IN ITS INSTRUMENT OF CONCESSION OF MANAGEMENT, ADEQUATE SPECIAL TERMS (AGEVOLAZIONI) IN FAVOR OF THE COMPANY (ALITALIA) IN REGARD TO THE AMOUNT OF AIRPORT CHARGES RELATED TO AIRCRAFT OPERATIONS. SUCH SPECIAL TERMS WILL BE SET BY AGREEMENT BETWEEN THE COMPANY (ALITALIA) AND THE MANAGING AGENCY WITH THE INTERVENTION OF THE MINISTRY." ACCORDING TO ALITALIA SOURCE, ALITALIA HAS INTERPRETED THESE LAST TWO PARAGRAPHS TO MEAN THAT ALITALIA SHOULD CONTINUE TO BE EXEMPT FROM USER CHARGES, BUT MIGHT BE WILLING TO SETTLE FOR SOME "RESTORATION OF THE BALANCE" IF TRIBUNAL DETERMINES THAT ALITALIA MUST PAY ALL OR PART OF CHARGES.

11. IN REGARD TO GROUND HANDLING, COLLINI AND LIOI TOLD US THAT CIVILAVIA HAD ORDER ALITALIA TO TURN OVER ITS GROUND HANDLING FACILITIES AND CREWS TO SAR. THEY SAID THIS MATTER HAD ALSO BEEN REFERRED TO TRIBUNAL. THEY SEEMED CONFIDENT THAT ALITALIA WOULD HAVE TO GIVE UP ITS OWN GROUND HANDLING FACILITIES, BUT AGAIN, THEY COULD NOT ESTIMATE WHEN. EMBASSY HAS BEEN INFORMED BY U.S. AIRLINE MANAGERS THAT GROUND HANDLING DISCRIMINATION IS LIKELY TO INCREASE BEFORE IT DIMINISHES. THEY SAY SEARN, THE FOOD CATERING AGENCY, IS TO BE TAKEN OVER BY SAR, EXCEPT FOR PORTION THAT WILL REMAIN IN ALITALIA'S HANDS, EARLY IN 1977.BEAUDRY

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